DOCUMENT RESUME

ED 244 326 EA 016 753

AUTHOR Mondschein, Eric S.
TITLE Legal Responsibility of Educators in Child Abuse.
PUB DATE 84
NOTE 11p.; In: Jones, Thomas N., Ed. and Semler, Darel P., Ed. School Law Update...Preventive School Law. p36-45. For complete document, see EA 016 748.
PUB TYPE Legal/Legislative/Regulatory Materials (090) -- Guides - Non-Classroom Use (055)

EDRS PRICE MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS Board of Education Policy; *Child Abuse; Child Neglect; Elementary Secondary Education; Family Problems; *Legal Responsibility; Parent Child Relationship; *Sexual Abuse; Teacher Responsibility

ABSTRACT

This chapter explores the legal responsibilities of educators concerning the problem of child abuse. The first section provides a legal definition of child abuse as behavior of a parent or guardian that (1) inflicts serious physical injury on a child by nonaccidental means; (2) creates a substantial risk of such injury; or (3) commits or allows a sex offense against the child. Section 2 examines statutory requirements providing for teacher and administrator responsibility, and section 3 highlights issues of liability for mandated reporting and for failure to report suspected child abuse. The chapter concludes with a list of identifying characteristics of abused children and suggests guidelines for school districts to consider in confronting the issue. (TE)

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Legal Responsibility of Educators in Child Abuse

ERIC S. MONDSCHEIN

Eric S. Mondschein is Director of the Law, Youth and Citizenship Program, co-sponsored by the New York State Bar Association and the New York State Education Department. He has served in several capacities with the U.S. Department of Education. He holds M.Ed. and Ed.D. degrees from the University of Massachusetts. Dr. Mondschein has been actively engaged in writing and has had several articles published on school law topics. He has also presented papers for educational organizations and numerous workshops on teacher and student rights in secondary and higher education.

INTRODUCTION

In 1982, over 850,000 cases of child abuse and neglect were reported in the United States.[1] School administrators and teachers have an important role to play in the elimination of child abuse. They are literally on the front lines in fighting a problem that has reached epidemic proportions.[2]

Since the 1960's, with the recognition of the "battered child syndrome,"[3] states have enacted legislation defining child abuse and requiring physicians and certain professionals to report suspected cases of child abuse and neglect to specified state and local agencies.[4] The first

1. *See generally*, U.S. Department of Health and Human Services, 1983 Report by the National Center on Child Abuse and Neglect.

2. The American Humane Association found in 1976 that 413,000 cases of child abuse and neglect had been reported. To date the figure may be as high as 900,000 with projections that it will surpass one million in a year. *See, Child Abuse: The Ultimate Betrayal*, TIME (Sept. 5, 1983).

3. "Battered Child Syndrome" is the condition of children who have sustained serious or repeated physical injuries by non-accidental means. The injury is usually inflicted by a parent or one who is caring for the child. *See*, Kempe, Silverman, Droegmueller & Silver, *The Battered Child Syndrome*, 191 J.A.M.A. 17 (1962). *See also* Sussman, *Reporting Child Abuse: A Review of the Literature*, 8 FAM. L.Q. 245 (1974). Courts have also accepted the syndrome as a legitimate medical diagnosis. *See, e.g.*, Landeros v. Flood, 551 P.2d 589 (Cal. 1976); James v. Maryland, 248 A.2d 910 (1968); Commonwealth v. Labbe, 373 N.E.2d 227 (Mass. App. Ct. 1978); and People v. Hensen, 349 N.Y.S.2d 657 (N.Y. 1973).

4. By 1965 all fifty states and the District of Columbia, enacted legislation requiring physicians and other professionals to report. *See* Kohlman, *Malpractice Liability for Failing to Report Child Abuse*, 49 CAL. ST. B.J. 119 (1974)

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generation of these statutes focused attention on the role physicians, health officials, and law enforcement personnel must have in reporting suspected cases of child abuse.[5] Little attention to the role educators could play was given by states. It was discovered that physicians, health officials, and law enforcement agencies rarely came in contact with abused children, except in the most severe cases.[6] Teachers and school administrators, however, are in a unique position to observe children over extended periods of time on a daily basis.[7] In recognizing the role educators could play, states have enacted second and third generation legislation requiring teachers and administrators to report cases of suspected child abuse. This chapter will explore the legal responsibilities of educators concerning the problem of child abuse. The first section will define child abuse; section two will examine the statutory requirements providing for teacher and administrator responsibility; and section three will highlight the issues of liability. The chapter will conclude with the examination of the characteristics of abused children and suggested guidelines for school districts to consider in confronting the issues of child abuse.

DEFINING CHILD ABUSE

The Federal Government under the Child Abuse Prevention and Treatment Act of 1974,[8] defines child abuse and neglect as,

> the physical or mental injury, sexual abuse or exploitation, negligent treatment, or maltreatment of a child under the age of eighteen, or the age specified by the child protection law of the state in question, by a person, who is responsible for the child's welfare under the circumstances which indicate that the child's health or welfare is harmed or threatened thereby. . . .[9]

Most states have developed definitions similar to the above. Some states, however, have different age limitations based on the maximum age of juvenile court jurisdiction, and some do not include sexual offenses as part of the above statute.

Abused child, as defined by the State of New York, means a child less than eighteen years of age whose parent or other person legally responsible to care,

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5. *See*, Comment, *Civil Liability for Failing to Report Child Abuse*, DET. C.L. REV. 135, 139 (1977).
6. Fraser, *A Glance at the Past, A Gaze at the Present, A Glimpse at the Future: A Critical Analysis of the Development of Child Abuse Reporting Statutes*, 54 CHI.[-]KENT L. REV. 641, 657-58 (1978).
7. *Id.*
8. 42 U.S.C. §§ 5101-5106 (1977 & Supp. 1979).
9. *Id.* at § 5102.

1) inflicts or allows to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of any bodily organ, or;
2) creates or allows to be created a substantial risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted impairment of the function of any bodily organ or;
3) commits, or allows to be committed, a sex offense against such child, as defined in the penal law, provided, however, that the corroboration requirements contained therein shall not apply to proceedings under this article.[10]

Although there are some slight variations among the states as to the precise definition of child abuse, they are in general, similar.[11] Once having defined the abused child, it is essential to determine who he or she is. Identification of victims is necessary if the state is going to protect the child and end the abusive treatment.[12] Therefore, the states established child abuse laws with mandatory reporting requirements of certain professionals, including teachers.

STATE REPORTING STATUTES

The legislatures in all fifty states and the District of Columbia recognized the need to ensure the identification of abused children. Therefore, they enacted reporting laws requiring certain professionals to report suspected abuse cases.[13] Today, every jurisdiction requires certain professionals, including teachers and administrators to report suspected cases of child abuse.[14]

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10. N.Y. FAM. COURT ACT § 1012 (1973).

11. *See generally*, U.S. Department of Health and Human Services, National Center on Child Abuse and Neglect, Critical Issues in Child Protective Services, 1, 6-9 (1980).

12. PAULSEN, THE LAW AND ABUSED CHILDREN IN THE BATTERED CHILD 8-9 (2d ed. 1974).

13. *Comment*, *supra* note 5 at 139.

14. *See*, ALA. CODE § 26-14-3(a) (1975); ALASKA STAT. § 47.17.020 (1979); ARIZ. REV. STAT. ANN. § 13-3620 (1978); ARK. STAT. ANN. § 42-808 (1977); CAL. PENAL CODE § 1165-66 (West Supp. 1981); COLO. REV. STAT. § 19-10-104(2) (1) (1978); CONN. GEN. STAT. ANN. § 17-38a (West Supp. 1981); DEL. CODE ANN. tit. 16, § 903 (Supp. 1980); D.C. CODE ANN. § 2-162 (Supp. 1978); FLA. STAT. ANN. § 827.07(3)(d) (West Supp. 1981); GA. CODE ANN. § 74-111(a) (Supp. 1981); HAWAII REV. STAT. § 350-1(a) (Supp. 1980); IDAHO CODE § 16-1619 (1979); ILL. ANN. STAT. ch. 23. § 2054 (Smith-Hurd Supp. 1981-82); IND. CODE § 31-6-11-3 (Supp. 1980); IOWA CODE ANN. § 232.69(b) (West Supp. 1981-82); KAN. STAT. ANN. § 38-717 (Supp. 1980); KY. REV. STAT. § 199.335(2) (Supp. 1980); LA. REV. STAT. ANN § 14:403C(1) (West 1974 & Supp. 1981); ME. REV. STAT. ANN. tit. 22, § 4011(1) (Supp 1980-1981); MD. ANN. CODE art. 27 § 35A(c) (1976 & Cum. Supp. 1980); MASS. ANN. LAWS ch. 119, § 51A (Michie/Law Co-op Supp. 1980); MICH. COMP. LAWS ANN. § 722.623(1)

For example, the Massachusetts statute illustrates the types of professionals required to report suspected abuse.

> Any physician, medical intern, hospital personnel engaged in the examination, care, or treatment of persons, medical examiner, dentist, nurse, chiropractor, podiatrist, osteopath, public or private school teacher, educational administrator, guidance or family counselor, day care worker, probation officer, social worker, foster parents, or police officers.[15]

Educators, as mandatory reporters are required to report suspected cases of child abuse to the proper authorities. In all states, this means contacting the state's child protective service unit or the proper law enforcement agency.[16]

States have created the duty to report suspected child abuse by teachers and administrators. Having created the duty, states have also encouraged reporting by enacting laws concerning the issues of liability for mandated reporters.

LEGAL IMPLICATIONS FOR MANDATED REPORTERS

Immunity

Every state's reporting statute has a clause providing some kind of immunity from prosecution for those reporting cases of suspected abuse.[17] The basic argument for immunity is that no reporter should fear reprisal for performing a mandated responsibility.[18] The threat or mere possibility of liability for reporting, would inhibit the reporting sought by the statute. Most reporters are, therefore, protected by a

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(Supp. 1981-82); MINN. STAT. ANN. § 626.556(3) (West Supp. 1981); MISS. CODE ANN. § 43-23-9 (Supp. 1980); MO. ANN. STAT. § 210.115(1) (Vernon Supp. 1981); MONT. REV. CODES ANN. § 10-1304 (Supp. 1977); NEB. REV. STAT. § 28-1501 (1975); NEV. REV. STAT. § 200.502(2)(d) (1979); N.H. REV. STAT. ANN. § 169-C:29 (Supp. 1979); N.J. STAT. ANN. § 9:6-8.10 (West 1976); N.M. STAT. ANN. § 32-1-15(A((Cum. Supp. 1980); N.C. GEN. STAT. § 7A-543 (Supp. 1979); N.D. CENT. CODE § 50-25. 1-03 (Supp. 1979); N.Y. SOC. SERV. L. tit. 6 § 413 (McKinney 1976 & Supp. 1980-81); OHIO REV. CODE ANN. § 2151.42.1 (Page Supp. 1980); OKLA. STAT. ANN. tit. 21, § 846(A) (West Supp. 1980-81); OR. REV. STAT. §§ 418.740.750 (1979); PA. STAT. ANN. tit. 11, § 2204(c) (Purdon Supp. 1981-82); R.I. GEN. LAWS § 40-11-3 (Supp. 1980); S.C. CODE § 20-10-50 (Supp. 1980); S.D. CODIFIED LAWS ANN. § 26-10-10 (1976); TENN. CODE ANN. § 37-1203 (Supp. 1980); TEX. FAM. CODE ANN. § 34.01 (Vernon 1975 & Supp. 1980-81); UTAH CODE ANN. § 33 (Supp. 1983); VA. CODE § 26.44.030(1) (Supp. 1981); W. VA. CODE § 49-6A-2 (1980); WIS. STAT. ANN. § 48-981(2) (West 1979); WYO. STAT. § 14-3-205 (1977).

15. *See*, MASS. GEN. LAWS ANN. ch. 119, § 51A (West 1980).
16. *See*, Kohlman *supra* note 4 at 120 (1974).
17. *See*, Schwartz, *Child Abuse and Neglect: A Survey of the Law*, MEDICAL TRIAL QUARTERLY 293, 310 (1930).
18. *Id.* at 311.

qualified immunity for liability, either civil or criminal, if they report in good faith and without malice. The good faith of any mandated reporter is presumed in most reporting statutes.[19]

Failure to Report

The concept of mandatory reporting is meaningless if the law provides no means of enforcement. Therefore, states have enacted penalties for mandatory reporters who fail to report cases of suspected child abuse. States, however, have not enacted uniform liability clauses. Thirty-two states impose criminal liability,[20] and only five states have made provisions for civil liability.[21] Twelve states have created a duty to report but have not specified a penalty for breach of that duty.[22] Michigan is the only state to adopt a negligence standard as the basis for liability.[23] The other states which recognize civil liability require proof of willful misconduct.[24] In such an action, willful misconduct is defined to mean "that the actor has intentionally done an act of unreasonable character in disregard of a risk known to him ... or so great that as to make it highly probable that harm would follow."[25]

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19. Schwartz, *supra* note 17 at 312.

20. *See*, ALA. CODE § 26-14-13 (1975); ARIZ. REV. STAT. ANN. § 13-3619 (1978); ARK. STAT. ANN. § 42-816(a) (1977); CAL. PENAL CODE § 11162 (West 1970); COLO. REV. STAT. § 19-20-104(a) (1978); FLA. STAT. ANN. § 827.07(18) (West Supp. 1981); GA. CODE ANN. § 74-111(d) (Supp. 1980); IND. CODE § 31-6-11-20 (Supp. 1980); IOWA CODE ANN. § 232.75(1) (West Supp. 1981-82); KAN. STAT. ANN. § 38-720 (Supp. 1980); KY. REV. STAT. § 199.990(7) (Supp. 1980); LA. REV. STAT. ANN. § 14:4031 (West 1974 & Supp. 1981); MICH. COMP. LAWS ANN. § 722.633(2) (Supp. 1981-82); MINN. STAT. ANN. § 626.556(6) (West Supp. 1981); MO. ANN. STAT. § 210.165 (Vernon Supp. 1981); NEB. REV. STAT. § 28-15 (1975); NEV. REV. STAT. § 200.507 (1979); N.H. REV. STAT. ANN. § 169-C:39 (Supp. 1979); N.J. STAT. ANN. § 9:6-8.14 (West 1976); N.M. STAT. ANN. § 32-1-15(F) (Cum. Supp. 1980); N.Y. SOC. SERV. LAW tit. 6 § 420(1) (McKinney 1976); N.D. CENT. CODE § 50-25.1-13 (Supp. 1979); OKLA. STAT. ANN. tit. 21, § 846(A((West Supp. 1980-81); PA. STAT. ANN. tit. 11, § 2212 (Purdon Supp. 1981-82); R.I. GEN. LAWS § 40-11-6.1 (Supp. 1980); S.C. CODE § 20-10-190 (Supp. 1980); S.D. CODIFIED LAWS ANN. § 26-10-10 (1976); TENN. CODE ANN. § 37-1212 (Supp. 1980); TEX. FAM. CODE ANN. § 34.07 (Vernon Supp. 1980-81); UTAH CODE ANN. § 78-3b-10 (Supp. 1979); WASH. REV. CODE ANN. § 26.44.080 (Supp. 1981); W. VA. CODE § 49-6A-8 (1980).

21. *See*, ARK. STAT. ANN. § 42-816(b) (1977); COLO. REV. STAT. § 19-10-104(b) (1978); IOWA CODE ANN. § 232.75(2) (West Supp. 1981-82); MICH. COMP. LAW ANN. § 722.633(1) (Supp. 1981-82); N.Y. SOC. SERV. LAWS § 420(2) (McKinney 1976).

22. These states are Alaska, Hawaii, Idaho, Illinois, Maine, Maryland, Mississippi, Montana, North Carolina, Ohio, Oregon, and Wyoming.

23. *See*, MICH. COMP. LAWS ANN. § 722.633(1) (Supp. 1981-82).

24. *See*, ARK. STAT. ANN. § 42-816(b) (1977); COLO. REV. STAT. § 19-10-104(b) (1978); IOWA CODE ANN. § 232.75(1) (West Supp. 1981-82); N.Y. SOC. SERV. LAW § 420(2) (McKinney 1976).

25. W. PROSSER, HANDBOOK OF THE LAW OF TORTS 185 (4th ed. 1971).

In many states, "reasonable cause to believe"[26] creates the obligation to report, while other states require "cause to believe"[27] or require "reasonable cause to know or suspect."[28] There is little difference in the intent of these statutes: teachers are required to report when they should suspect a child is abused. The standard is an objective one. Other states, however, have adopted a subjective standard of care, creating a duty to report when a mandated reporter actually "knows or suspects" abuse.[29]

In general, a teacher or administrator who suspects a child is being abused is obligated to report it. Failure to report may lead to civil or criminal liability. Most statutes which include penalty clauses classify failure to report as a misdemeanor usually punishable by up to one year in prison or a $500 to $1,000 fine or both.[30] Those mandated to report are probably more vulnerable to civil suits for their failure to report than to criminal prosecution.[31] If a child who is abused and unreported is one of a class of persons which a criminal statute was intended to protect, a violation may permit a claim for civil damages in any event. In some states, the violation would constitute negligence per se,[32] which in others it would be necessary to prove that the failure to report was also the proximate cause of the plaintiff's injury.[33]

The immunity and penalty provisions serve as the primary statutory methods for encouraging reporting. Although these mandates have contributed to an increase in reporting, full compliance and cooperation from teachers and administrators has not been forthcoming.[34] Of

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26. *See, e.g.*, ILL. ANN. STAT. ch. 23, § 2054 (Smith-Hurd Supp. 1980-81); KY. REV. STAT § 199.335 (Supp. 1980) and OR. REV. STAT. § 418.750 (1979).

27. *See, e.g.*, ALASKA STAT. § 47.17.020 (1979); GA. CODE ANN. § 74-111(a) (Supp. 1980); TEX. FAM. CODE ANN. § 34.01 (Vernon 1975).

28. *See, e.g.*, COLO. REV. STAT. § 19-10-104 (1978); *See also* N.Y. SOC. SERV. LAW tit. 6 § 413 (McKinney 1976 & Supp. 1980-81).

29. *See, e.g.*, CAL. PENAL CODE § 11165-66 (West Supp. 1981); DEL. CODE ANN. tit. 16 § 903 (Supp. 1980) and N.M. STAT. ANN. § 32.1-15 (Supp. 1980).

30. *See, e.g.*, ARIZ. REV. STAT. ANN. § 13-3619 (1978); COLO. REV. STAT. § 19-10-104(4)(a) (1978); MO. ANN. STAT. § 210.165 (Vernon Supp. 1981) and N.Y. SOC. SERV. LAW tit. 6, § 420 (McKinney 1976 & Supp. 1980-81).

31. Prosecutors have not been willing to initiate criminal proceedings against non-reporting professionals. Fraser, *A Pragmatic Alternative to Current Legislative Approaches to Child Abuse*, 12 AM. CRIM. L. REV. 103, 115 (1974). *See also* Schwartz, *Child Abuse and Neglect*, *supra* note 17 at 312.

32. *See, e.g.*, MICH. COMP. LAWS ANN. § 722.633(1) (Supp. 1981-82). *See also*, Schwartz, *Child Abuse and Neglect*, *supra* note 17 at 312.

33. *See, e.g.*, N.Y. SOC. SERV. LAW tit. 6, § 420 (McKinney 1976 & Supp. 1980-81).

34. *See*, Sussman, *supra* note 3 at 270-71. Unlike other mandated reporters teachers have consistently failed to recognize and report suspected child abuse. *E.g.*, New York State reported that during 1972 only 10% of reports were filed by educators when over 50% of abused children are of school age. *See* New York Reports of Alleged Child Abuse and Maltreatment by Reporting Source, 1982 (SCR No. 401 Report). *See also*, Michigan Children's Protective Services Management Information, Report P.S. 311 (1980). Only 7% of all reported child abuse were filed by educators.

the total reported cases of child abuse last year, educators were responsible for approximately ten percent of the reports.[35]

Some professionals argue that the dearth of reporting is due to the lack of enforcement of the mandatory reporting laws.[36] There is not a single recorded case finding teachers or administrators in noncompliance.[37] Other professionals, however, believe the low incidence of reporting is due to educators lack of information about the law, and familiarity with the physical and behavioral indicators that are often associated with abused children.

IDENTIFYING THE ABUSED CHILD

Educators are potentially a major resource for helping to identify abused children. They are in a unique position to observe children on a daily basis over extended periods of time and to communicate with them regularly. Consequently, teachers and administrators need to know the physical and emotional indicators that are often associated with abused children.

The following should be viewed as indicators of the possibility of abuse. The presence of one or more of these indicators does not necessarily imply that abuse has occurred, it should, however, alert the teacher to the possibility that abuse existed.

Physical and Behavioral Indicators of Child Abuse

Physical

- Unexplained bruises and welts that may indicate physical abuse: on face, legs, mouth; on torso, back, thighs; in various stages of healing; clustered, forming regular patterns; reflecting shape of article used; regularly appear after absence, weekend, or vacation
- Unexplained burns that may indicate abuse: cigarette burns; immersion burns indicating dunking in a hot liquid; rope burns that indicate confinement; dry burns indicating that a child has been forced upon a hot surface, or has had a hot implement applied to the skin

35. *Id. See also* 1982 Findings of the National Center on Child Abuse and Neglect, U.S. Department of Health and Human Services.

36. *See* Commer, *Civil Liability for Failing to Report Child Abuse, supra* note 5 at 136. *See also* Aaron, *Civil Liability for Teachers' Negligent Failure to Report Suspected Child Abuse*, 28 WAYNE L. REV. 183, 185-86 (1982).

37. Action has been taken against physicians and others, however, for failure to report or diagnose suspected child abuse. *See*, Landeros v. Flood, 551 P.2d 389 (Cal. 1976); Mammo v. Arizona, 24(2) A.T.L.A.J. (Ariz. 1981), City of Jacksonville v. Florida First Nat'l Bank, 339 So. 2d 632 (Fla. 1976).

- Unexplained lacerations or abrasions that may indicate abuse: lacerations of the lips, eyes, gums, or any portion of an infant's face; any laceration or abrasion to external genitalia
- Unexplained skeletal injuries that may indicate abuse: to skull, nose, facial structure; in various stages of healing; multiple or spiral fractures
- Unexplained head injuries that may indicate abuse: unexplained hair loss and/or hemorrhaging beneath the scalp; subdural hematomas; retinal hemorrhages or detachments

Behavioral

- Wary of adult contacts
- Apprehensive when other children cry
- Behavioral Extremes: aggressiveness or withdrawal
- Frightened of parents
- Afraid to go home
- Reports abuse by parents or guardian

Sexual Abuse

Physical

- Difficulty in walking or sitting
- Torn, stained, or bloody underclothing
- Pain or itching in genital area
- Bruises or bleeding in external genitalia, vaginal, or anal areas
- Venereal disease in pre-teens
- Pregnancy, especially in pre-teens

Behavioral

- Poor peer relationships
- Withdrawal, fantasy, or infantile behavior
- Bizarre, sophisticated, or unusual sexual behavior or knowledge in young children
- Delinquent or run away
- Reports of sexual abuse by parent or guardian[38]

The above indicators should be considered when teachers and administrators are concerned about a child having been abused. Of course, each indicator can have a reasonable explanation, however,

38. *See*, Lauer, The Role of the Mental Health Professional in the Prevention and Treatment of Child Abuse and Neglect, National Center on Child Abuse and Neglect, U.S. Department of Health and Human Services, Pub. No. 79-30194 (1979).

when viewed in relation to the child and his or her particular circumstances, these physical and behavioral indices should provide educators with the necessary information to determine whether or not to suspect abuse.

In order to assist educators confronted with the issue of child abuse, school district policy and procedures should be developed. A policy regarding child abuse demonstrates to the community a commitment to confront the problem of child abuse. The ultimate purpose of such a policy is to protect children whose health and welfare are threatened.

The suggestions that follow are designed to assist education policy makers develop and implement effective child abuse policies and procedures.

Suggested Elements in a School District Policy

- A brief rationale for involving school personnel in reporting
- The title and appropriate section numbers of the state reporting statute
- A statement of school board support for reporting suspected child abuse
- Who is mandated to report
- The law defining reportable conditions of child abuse
- The person or agency to receive reports
- The information required of the reporter
- Whether or not there is immunity from criminal penalty or from civil liability for those who report
- The penalty for failure to report established by state law
- The action which will be taken by the school board for failure to report
- Any provisions of the law regarding the confidentiality of reporters or of records pertaining to report of suspected abuse
- Copy of form which must be used on filing child abuse reports
- The indentifiable physical and behavioral indicators of abuse
- Community resources which educators can use in responding to child abuse cases[39]

CONCLUSION

Child abuse and neglect is not a new phenomenon. What is new is society's willingness to confront the problem. Educators can and must

39. *See*, State Education Department of New York, Child Abuse and Neglect A Resource Package for School Policy (1982).

play a leadership role in protecting the health and welfare of children. Teachers and administrators unlike other professionals, see children on a daily basis. They observe how children interact with their peers and adults, and have some basis for judging a child's behavior against the norms of the group and against the child's own history. This unique position provides educators with an opportunity to detect abuse and neglect that is unequaled.

Educators must be provided with the knowledge to enable them to identify suspected abuse and neglect. Furthermore, school boards must make it clear that they support the efforts of teachers and administrators who report suspected child abuse and neglect. Reporting suspected cases of abuse and neglect certainly does not ensure that the situation will improve. Not reporting, however, ensures that if the abuse or neglect exists the child will continue to be at risk.